

CUMULATIVE DIGEST

CH. 8

BURGLARY & RESIDENTIAL BURGLARY

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Generally

§8-1(a)

Burglary

People v. Beauchamp, 241 Ill.2d 1, 944 N.E.2d 319 (2011)

A person commits burglary when without authority he enters a motor vehicle or any part thereof with intent to commit therein a felony or theft. 720 ILCS 5/19-1(a). An entry for purposes of the statute does not require intrusion by a person's entire body; an intrusion by part of the body into the protected enclosure is sufficient, even if the intrusion is slight. An entry may be accomplished by breaking the close, i.e., crossing the planes that enclose the protected space. An entry may also be made by breaking the close with an instrument, rather than the defendant's person, but only if done with the intention of using the instrument to commit the intended felony or theft.

The court concluded that, viewing the evidence in the light most favorable to the State, the State proved that defendants entered the vehicle when they removed its rear hatchback window. The rear window was closed and the lock on the rear door undamaged when complainant parked her vehicle. Two hydraulic arms affixed to the interior of the vehicle lift the window outward when a button on the rear door is pressed. When the rear window was recovered in defendants' possession, the lock on the rear door had been punched out, one of the hydraulic arms was dangling from the vehicle, and the other was on the ground.

A reasonable inference exists that defendants were able to open the rear window by either prying it open or pressing the button after the lock was punched. Although touching the inside of the window would not constitute an entry where the window opened away from the vehicle, given the size of the window (4 feet by 3 to 3½ feet), a fair amount of maneuvering and force would have been necessary to remove the window, as evidenced by the dangling and detached hydraulic arms. Therefore, the court found that it was physically impossible to remove the window without gaining at least minimal entry into the protected interior or close of the vehicle.

(Defendants were represented by Assistant Defender Amanda Ingram, Chicago, and former Assistant Defender Steven Becker.)

People v. Edgeston, ___ Ill.App.3d ___, 920 N.E.2d 467 (2d Dist. 2009) (No. 2-07-1195, 11/24/09)

Under Illinois and federal law, a court decision which narrows the application of a substantive criminal statute is applied retroactively to convictions in which the direct appeal has been exhausted. **People v. Childress**, 158 Ill.2d 275, 633 N.E.2d 635 (1994), which held that burglary and residential burglary are mutually exclusive offenses and that the former is not a lesser included offense of the latter, narrowed the applicability of the burglary statute. Thus, it should be applied retroactively in collateral proceedings. (See also **COLLATERAL REMEDIES**, §§9-1(i)(1),(2), 9-5(d)).

(Defendant was represented by Deputy Defender Chuck Schiedel, Supreme Court Unit.)

People v. Richardson, 2011 IL App (5th) 090663 (No. 5-09-0663, 8/17/11)

A person commits burglary when without authority he knowingly enters or without

authority remains within a building or any part thereof, with intent to commit a felony or theft. 720 ILCS 5/19-1(a). The statute defining the offense thus provides two alternative ways to commit the offense – by unlawful entry or unlawfully remaining after lawful entry. The offense of burglary by remaining is proved by evidence that defendant lawfully entered a store during business hours and then secreted himself in the store until it closed with intent to steal, but evidence of hiding and secreting until a store closes is not necessary to a conviction of burglary by remaining. Evidence that defendant formed a criminal intent after a lawful entry suffices.

The State conceded that defendant entered a liquor store with authority, and was therefore required to prove that he subsequently remained there without authority and with intent to commit a theft to convict defendant of burglary by remaining. It satisfied this burden with evidence that defendant entered a clearly marked employees-only area where he stole lottery tickets and cash. This evidence proved that with intent to commit a theft, he unlawfully remained in the liquor store by moving to an area of the store where he was not authorized to be. The implied authority to be in a store during business hours does not extend to areas designated as private or employees only.

(Defendant was represented by Assistant Defender Dan Evers, Mt. Vernon.)

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§8-1(b)

Residential Burglary

People v. Burnley, 2014 IL App (5th) 120486 (No. 5-12-0486, 2/19/14)

Residential burglary is defined as knowingly and without authority entering or remaining within the “dwelling place” of another with the intent to commit a felony or theft. (720 ILCS 5/19-3(a)). A “dwelling place” is “a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside.” (720 ILCS 5/2-6(b)).

The court found that the State’s evidence provided a basis by which a reasonable jury could have found that the house in question was a “dwelling place.” The owner originally purchased the house for her parents, and had lived there “on and off for a year” although her primary residence was elsewhere. The owner kept personal property in the house, including clothing, a bed, a television, a kitchen table, business papers, and a new washer and dryer. The owner was in the process of moving most of this property to her primary residence, but the utilities were still connected and the home was maintained and kept neat. The owner described her feelings upon discovering the burglary as “extremely angry and . . . even vengeful.”

The court contrasted the facts with those of **People v. Roberts**, 2013 IL App (2d) 110524, where the burglarized house was vacant and the owners had moved out of state with no plans to return. Here, although the owner did not live primarily at the burglarized home, the jury could rationally have concluded that the home was a “dwelling place” because it was not abandoned, contained personal property including a bed, and was frequently visited by the owner. In addition, the owner kept the house neat and was outraged when it was burglarized. Under these circumstances, a reasonable jury could have found that the owner had two residences and was using them both at the time of the offense.

The court added that even if the owner was moving from one house to the other, “[t]he unique protections afforded by the residential burglary statute are not lost at some point during the moving process, well before the home is completely vacated.”

Defendant’s conviction for residential burglary was affirmed.

(Defendant was represented by Assistant Defender Rob Markfield, Chicago.)

People v. Edgeston, ___ Ill.App.3d ___, 920 N.E.2d 467 (2d Dist. 2009) (No. 2-07-1195, 11/24/09)

Under Illinois and federal law, a court decision which narrows the application of a substantive criminal statute is applied retroactively to convictions in which the direct appeal has been exhausted. **People v. Childress**, 158 Ill.2d 275, 633 N.E.2d 635 (1994), which held that burglary and residential burglary are mutually exclusive offenses and that the former is not a lesser included offense of the latter, narrowed the applicability of the burglary statute. Thus, it should be applied retroactively in collateral proceedings. (See also **COLLATERAL REMEDIES**, §§9-1(i)(1),(2), 9-5(d)).

(Defendant was represented by Deputy Defender Chuck Schiedel, Supreme Court Unit.)

People v. McGee, 398 Ill.App.3d 789, 924 N.E.2d 612 (1st Dist. 2010)

1. Residential burglary occurs where the defendant knowingly and without authority enters or remains within a “dwelling place” with the intent to commit a felony or a theft. 720 ILCS 5/19-3(a). A dwelling place is defined as “a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside in or in their absence intend within a reasonable period of time to reside.” 720 ILCS 5/2-6(b).

2. A house which had been damaged by fire qualified as a “dwelling place” where the first floor of the building was used to store clothes, furniture, appliances and other personal belongings, the owners of the house checked on the premises and the belongings every day, and one of the owners testified that at the time of the burglary she was planning to move back into the house. By attempting to secure the premises and checking daily on the condition of the house and its contents, the owners took actions which created a reasonable inference that they left their belongings in the building with the intent of returning to reside there.

The fact that the property was later lost through foreclosure did not negate the intent of the owners - at the time the defendant entered - to use the building as a residence. Defendant’s conviction for residential burglary was affirmed.

(Defendant was represented by Assistant Defender Carolyn Klarquist, Chicago.)

People v. Moore, 2014 IL App (1st) 112592 (Nos. 1-11-2592 & 1-12-0313, 5/14/14)

1. A person commits residential burglary where knowingly and without authority, he or she enters or remains within the “dwelling place” of another with the intent to commit a felony or theft. 720 ILCS 5/19-3(a). A “dwelling” is defined as a residence “in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside.” 720 ILCS 5/2-6(b). Residential burglary includes the offense of burglary, which occurs when a person without authority knowingly enters or without authority remains in a building or any part thereof with intent to commit therein a felony or theft.

2. Where defendant entered the rear portion of the basement of a multi-unit residence, and the only testimony concerning the building was from a developer who stated that he owned vacant units on the first, second, and third floors, there was insufficient evidence to

show that the premises were occupied or were intended to be occupied within a reasonable time. The developer did not claim that he lived in his units or that at the time of the offense tenants or buyers were planning on living in those units. Furthermore, there was no evidence at all concerning the ownership or expected occupancy of the basement, which the developer did not own. Under these circumstances, the evidence was insufficient to prove that defendant burglarized a residence.

The conviction for residential burglary was reduced to burglary.

(Defendant was represented by Assistant Defender Brian McNeill, Chicago.)

People v. Rankin, 2015 IL App (1st) 133409 (1-13-3409, 7/16/15)

1. To obtain a conviction for residential burglary, the State must prove beyond a reasonable doubt that the defendant knowingly and without authority entered the dwelling of another with intent to commit a felony or theft. The court concluded that the evidence in this case was insufficient to sustain a residential burglary conviction.

The only evidence against defendant was testimony by a person who lived in an apartment that as he drove past his building, he saw defendant carrying clothes in a gangway on the side of the building where the entrance to the witness's apartment was located. Approximately six hours later, the witness returned to his apartment and found that it had been broken into and that all of his clothes were missing. The witness stated that he had known defendant all of his life and recognized him coming out of the gangway. However, he did not inform police of defendant's identity for some two-and-a-half weeks after he was first interviewed because he was "going to deal with the situation himself."

The court noted that the witness testified that he saw the defendant coming out of the gangway, not out of the witness's apartment, and did not testify that he recognized any of the clothes defendant was carrying as being his property. In addition, although the police were called immediately, there was no evidence that defendant's fingerprints were found at the scene. Furthermore, there was no evidence that any of the clothes taken from the witness's apartment were found in defendant's possession.

The court stressed that the only evidence even remotely connecting defendant to the alleged burglary was the witness's uncorroborated testimony that he saw the defendant in the gangway carrying clothes and later found that his apartment had been burglarized and his clothes stolen. Because there was no evidence that defendant entered the witness's apartment, took the witness's clothes, or had possession of those clothes, there was no basis to find that the elements of residential burglary had been proven beyond a reasonable doubt.

(Defendant was represented by Assistant Defender Rebecca Levy, Chicago.)

People v. Roberts, 2013 IL App (2d) 110524 (No. 2-11-0524, 1/14/13)

A person commits residential burglary who knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft. 720 ILCS 5/19-3(a). For purposes of the residential burglary statute, "dwelling" is defined as "a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." 720 ILCS 5/2-6(b).

At the time of the offense, the owners of the burglarized house had moved out of state and had put the house up for sale. They did not intend to return and resume occupancy and the house was unoccupied. Because no owner or occupant resided in the house and neither intended to do so within a reasonable period of time, the house did not qualify as a "dwelling." It is not enough under the plain language of §2-6(b) that the owners intended that an eventual

purchaser reside there.

The house was not a dwelling, but it was a building. A burglary is committed when one enters a building knowingly and without authority with intent to commit therein a felony or theft. 720 ILCS 5/19-1(a). Burglary is an included offense of residential burglary. The Appellate Court therefore reduced defendant's conviction from residential burglary to burglary, and remanded for resentencing.

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§8-1(c)

“Without Authority”

People v. Bradford, 2014 IL App (4th) 130288 (No. 4-13-0288, 11/24/14)

720 ILCS 5/19-1(a) provides that “a person commits burglary when without authority he or she knowingly enters or without authority remains in a building . . . or any part thereof, with intent to commit therein a felony or theft.” Thus, burglary may be committed by either: (1) entering a building without authority with the intent to commit a felony or theft, or (2) remaining in a building without authority with the intent to commit a felony or theft. Defendant was charged with the second type of burglary, for knowingly without authority remaining within Walmart with intent to commit a felony or theft.

The evidence showed that defendant entered Walmart during business hours, took two DVDs from a display near the entrance, and returned the DVDs at the customer service desk in exchange for a gift card. He then removed the price tag from a hat, which he placed on his head, and put a pair of shoes in a Walmart bag which he took from his coat. Defendant then went with an unknown male to a cash register, paid for the unknown male's items using the gift card he had received earlier, and started to leave the store without paying for the shoes or hat.

Defendant argued that he was improperly convicted of burglary by remaining in the store with intent to commit a theft because he had entered the store lawfully, did not exceed the physical scope of that authority, committed the offense during business hours, and left after completing his criminal acts. Defendant argued that his actions constituted retail theft rather than burglary.

The Appellate Court disagreed. Under Illinois precedent, authority to enter a building which is open to the public for business extends only to those who enter with a purpose consistent with the reason the building is open. Thus, a person who enters with intent to commit a theft can be convicted of burglary based upon entering the business with that intent, because his intent is inconsistent with the purpose for which the owner has granted authority to the public to enter.

The court concluded that the same rationale applies where a defendant is convicted of burglary by remaining in a building that is open for business:

[J]ust as a defendant's *entry* is “without authority” if it is accompanied by a contemporaneous intent to steal, so too must a defendant's *remaining* be “without authority” if it also is accompanied by an intent to steal. . . . Accordingly, we . . . conclude that a defendant who develops an intent to steal after his entry into a public building may be found guilty of burglary by unlawfully remaining. . . . [T]he authority to remain in a public building, or any part of the public building, extends only

to persons who remain in the building for a purpose consistent with the reason the building is open.

Because defendant remained in Walmart “without authority” as he moved through the store and stole merchandise, and his purpose for being in Walmart was not consistent with the purpose for which the store was open to the public, his authority for remaining in the store was implicitly withdrawn. The conviction for burglary was affirmed.

(Defendant was represented by Assistant Defender Joel Wesson, Springfield.)

People v. McDaniel, 2012 IL App (5th) 100575 (No. 5-10-0575, 10/12/12)

“A person commits burglary when without authority he knowingly enters or without authority remains within a building . . . with intent to commit therein a felony or theft.” 720 ILCS 5/19-1(a).

Defendant was convicted of burglary on the theory that he remained within a store after forming an intent to commit a theft of the store’s merchandise. The evidence was that he entered the general customer area of a retail store during normal business hours, did not exceed the physical scope of that authority, and left the store after about six minutes, immediately after committing the theft. The Appellate Court reversed.

The Appellate Court agreed with the argument made by defendant in his brief: “If the police and prosecutors of Illinois believe that harsher penalties should be available to punish retail theft, they could put the issue before the legislature and seek change in the laws through legislative amendment. This [c]ourt should not assist the prosecution in creating a *de facto* amendment to the criminal law by reading ‘remaining within’ so broadly that common shoplifting becomes burglary.”

(Defendant was represented by Assistant Defender Ed Anderson, Mt. Vernon.)

People v. Richardson, 2011 IL App (5th) 090663 (No. 5-09-0663, 8/17/11)

A person commits burglary when without authority he knowingly enters or without authority remains within a building or any part thereof, with intent to commit a felony or theft. 720 ILCS 5/19-1(a). The statute defining the offense thus provides two alternative ways to commit the offense – by unlawful entry or unlawfully remaining after lawful entry. The offense of burglary by remaining is proved by evidence that defendant lawfully entered a store during business hours and then secreted himself in the store until it closed with intent to steal, but evidence of hiding and secreting until a store closes is not necessary to a conviction of burglary by remaining. Evidence that defendant formed a criminal intent after a lawful entry suffices.

The State conceded that defendant entered a liquor store with authority, and was therefore required to prove that he subsequently remained there without authority and with intent to commit a theft to convict defendant of burglary by remaining. It satisfied this burden with evidence that defendant entered a clearly marked employees-only area where he stole lottery tickets and cash. This evidence proved that with intent to commit a theft, he unlawfully remained in the liquor store by moving to an area of the store where he was not authorized to be. The implied authority to be in a store during business hours does not extend to areas designated as private or employees only.

(Defendant was represented by Assistant Defender Dan Evers, Mt. Vernon.)

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Conviction Based on Possessing Stolen Property

People v. Murphy, 2015 IL App (4th) 130265 (No. 4-13-0265, 3/18/15)

A person commits burglary when he enters a building with the intent to commit a theft. 720 ILCS 5/19-1(a). As relevant here, a person commits theft when he obtains or exerts control over stolen property knowing or reasonably believing it is stolen, and he either (a) intends to permanently deprive the owner of its use or benefit, or (b) uses the property in a manner that deprives the owner of its use or benefit. 720 ILCS 6/16-1(a). The intent to permanently deprive the owner of his property is generally inferred when the person takes the property.

Defendant purchased stolen property “on the street,” and admitted that he knew or at least strongly suspected the property was stolen. He then took the property to a pawn shop and pawned it in exchange for money. Defendant was convicted of burglary based on the State’s theory that he committed burglary by entering the pawn shop with the intent to commit a theft. According to the State, the theft occurred inside the pawn shop because, although defendant had taken control of the property prior to entering the pawn shop, he permanently deprived the owner of his property through the act of pawning it inside the pawn shop.

The Appellate Court reversed defendant’s conviction. It held that defendant obtained control over the property knowing it was stolen when he purchased it on the street and thus the theft had already occurred before defendant entered the pawn shop. Accordingly, defendant did not enter the pawn shop with the intent to commit a theft.

The dissent would have affirmed the burglary conviction since the burglary was only complete when defendant acted to permanently deprive the owner of his property by pawning it; it was not complete when defendant merely obtained control over the property by purchasing it on the street.

(Defendant was represented by former Assistant Defender Gary Peterson, Springfield.)

People v. Smith, 2014 IL App (1st) 123094 (1-12-3094, 6/13/14)

1. The offense of burglary occurs when without authority, a person knowingly enters or remains in a building or any part thereof with intent to commit a felony or theft. Possession of recently stolen property is not in and of itself enough to sustain a burglary conviction. However, the trier of fact may infer that possession of recently stolen property resulted from a burglary if: (1) there was a rational connection between defendant's recent possession of stolen property and his participation in the burglary; (2) defendant's guilt of burglary more likely than not flowed from his recent, unexplained and exclusive possession of the proceeds of a burglary; and (3) there was corroborating evidence of defendant's guilt. **People v. Housby**, 84 Ill. 2d 415, 420 N.E.2d 151 (1981). Although **Housby** concerned an instruction issue rather than the sufficiency of the evidence, the same factors are applicable when determining whether the evidence is sufficient to satisfy the reasonable doubt standard.

2. A witness testified that he saw defendant go through a hole in a fence behind an auto part store which had been closed for several months. The witness then lost sight of defendant due to an obstructing building. About 10 minutes later, defendant threw several items over the fence into the alley. He then returned to the alley and placed the items in a garbage can. He was stopped by police a short time later as he was pushing the garbage can down the street. The can contained a large number of auto parts.

The owner of the store testified that the store was no longer in use but that he checked it periodically. He was last in the store about a week before defendant's arrest. At that time, there was a hole in the fence behind the store. The owner did not conduct an inventory after defendant's arrest, but noticed that some items were missing.

Officers who examined the premises after defendant's arrest discovered that a garage door had been kicked in and a window broken, but they could not determine if the damage occurred recently.

The court concluded that the evidence was insufficient to sustain defendant's conviction for burglary. Although defendant was in possession of auto parts when he was arrested, there was no evidence to link the items in his possession to the store. Thus, any inference that defendant was in possession of property that had been recently stolen from the store was based on conjecture rather than evidence.

Second, although defendant admitted to police that the parts in his possession did not belong to him, his guilt did not "flow" from his possession where there was no evidence that defendant ever entered the part store. The witness testified that he saw defendant enter an opening in the fence, but that he then lost sight of the defendant for the next 10 minutes. He next observed defendant throwing pipes and auto parts over the fence. Because there was no evidence that defendant entered the store, an essential element of burglary was not proven.

Third, there was no corroborating evidence to suggest that defendant entered the store with intent to commit a theft. The officers testified that there was no way to tell whether the damage to the door and window had been inflicted recently. In addition, the witness who observed the defendant did not testify that he heard a door being kicked in or a window breaking.

The court concluded that the State's case was based merely on defendant's exclusive possession of property that was in close proximity to a burglary, and that no rational trier of fact could have found that the elements of burglary had been proven beyond a reasonable doubt. The conviction for burglary was reversed.

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